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The Honorable John R. Ruhl
Noted for November 18, 2019
Without Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

255 SOUTH KING STREET LIMITED PARTNERSHIP, a Washington limited partnership; 618 SECOND AVENUE LIMITED PARTNERSHIP, a Washington limited partnership; 1000 1ST AVENUE LIMITED PARTNERSHIP, a Washington limited partnership; and 1016 1ST AVENUE LIMITED PARTNERSHIP, a Washington limited partnership,

Plaintiffs,

vs.

CITY OF SEATTLE, a Washington municipal corporation,

Defendant.

EUGENE A. BURRUS and LEAH S. BURRUS, husband and wife and the marital community comprised thereof; WILLIAM J. JUSTEN and SANDRA L. JUSTEN, husband and wife and the marital community comprised thereof; THEODORE T. TANASE and PRISCILLA B. TANASE, husband and wife and the marital community comprised thereof; DAVID STARR, an individual; VASANTH PHILOMIN and KARIN PHILOMIN, husband and wife and the marital community comprised thereof; DANIEL TUPPER and PATRICIA TUPPER, husband and wife and the marital community comprised thereof; JOHN

No. 19-2-05733-5 SEA

(Consolidated with No. 19-2-08787-1 SEA)

DEFENDANT CITY OF SEATTLE'S MOTION FOR NEW TRIAL DATE

No. 19-2-08787-1 SEA
(Judge Ken Schubert)

DEFENDANT CITY OF SEATTLE'S MOTION FOR NEW TRIAL DATE - 1

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1 DRINKARD and JANET DRINKARD,
2 husband and wife and the marital community
3 comprised thereof; FRANK KATZ and
4 ELISE KATZ, husband and wife and the
5 marital community comprised thereof;
6 DEBORAH BOGIN COHEN and
7 RICHARD B. OSTERBERG, Trustees of the
8 ZVI Cohen Family Trust; JOHN A. BATES
9 and CAROLYN CORVI, husband and wife
10 and the marital community comprised
11 thereof; HARVEY ALLISON and MEI
12 WENG ALLISON, husband and wife and the
13 marital community comprised thereof;
14 VICTOR C. MOSES and MARY K.
15 MOSES, Trustees under the 2007 Moses
16 Trust; NANCY E. DORN and CAROL A.
17 VERGA, a married couple; ALEXANDER
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20 of The Thomas H. Peyree and Sally L.
21 Peyree Revocable Trust; ANTON P.
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husband and wife and the marital community
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and CYNTHIA J. MARIN, Trustees of The
Andrew P. Marin and Cynthia J. Marin
Family Revocable Trust; DANIEL S.
FRIEDMAN and MYRA A. FRIEDMAN,
husband and wife and the marital community
comprised thereof; HOLLY MORRIS, an
individual; and RONALD EVAN
WALLACE, an individual,

Plaintiffs,

vs.

CITY OF SEATTLE, a Washington
municipal corporation,

Defendant.

1 **I. RELIEF REQUESTED**

2 Pursuant to King County Local Civil Rule 4(d) and 40(e)(2), Defendant City of
3 Seattle (the “City”) respectfully requests that the current trial date of February 24, 2020 be
4 changed to April 27, 2020.

5 **II. STATEMENT OF FACTS**

6 On February 27, 2019 Plaintiffs 255 South King Street Limited Partnership, 618
7 Second Avenue Limited Partnership, 1000 1st Avenue South Limited Partnership, and 1016
8 1st Avenue South Limited Partnership filed a complaint seeking declaratory relief and
9 damages (the “255 South King St. Action”) related to the City’s Waterfront Local
10 Improvement District (“Waterfront LID”). On March 29, 2019, twenty-three individual
11 Plaintiffs filed a complaint seeking declaratory relief and damages also related to the
12 Waterfront LID (the “Burrus Action”). The City filed a motion to consolidate the two cases
13 on May 14, 2019, *see* Dkt. 11, and Plaintiffs did not object to the City’s Motion to
14 Consolidate. Dkt. 13. The Court granted the City’s Motion to Consolidate on May 22,
15 2019 and the two cases were consolidated under the 255 South King St. Action before Judge
16 Ruhl. Dkt. 14. The case schedule for the 255 South King St. Action now governs the
17 consolidated case. *Id.*

18 On May 29, 2019, this Court issued an Order for Pretrial Conference Pursuant to
19 CR 16 and CR 26(f). Dkt. 15. The Pretrial Conference was held on July 1, 2019. Dkt. 26.
20 During the Pretrial Conference, the Parties agreed to collaborate and prepare a Joint
21 Discovery Plan and Status Report, as well as propose a new trial date. *Id.* (“Joint Motion
22 to change trial date is reserved. Parties will confer regarding available trial dates.”).

23 Counsel for Plaintiffs graciously prepared the first draft of the Joint Discovery Plan
24 and Status Report and transmitted it on July 2, 2019 to counsel for the City. Declaration of
25 Mark S. Filipini in Support of Motion for New Trial Date (“Filipini Decl.”) ¶ 4. Through

1 August 8, 2019, counsel for Plaintiffs and the City exchanged redlined drafts of the Joint
2 Discovery Plan and Status Report, which included a proposed new trial date of April 27,
3 2020. *Id.* As of August 8, 2019, the City understood that the only outstanding issue to be
4 resolved was the total number of interrogatories that may be propounded to each party.
5 Filipini Decl. ¶¶ 5-6. Since then, Counsel for the City has been unable to finalize the Joint
6 Discovery Plan and Status Report with Plaintiffs’ counsel, despite repeated requests.

7 Trial is currently set for February 24, 2020. Dkt. 2. As discussed at the Pretrial
8 Conference on July 1, 2019, the current trial date does not work for Mr. Filipini, lead
9 counsel for the City, as he is also lead counsel for a trial scheduled to begin in King County
10 Superior Court on February 10, 2020. Filipini Decl. ¶ 2. The Parties tentatively agreed to
11 April 27, 2020 for a new trial date because Mr. Franklin, Plaintiffs’ lead counsel, has a trial
12 scheduled for March 16, 2020. Filipini Decl. ¶ 3.

13 III. STATEMENT OF ISSUE

14 Whether the Court should grant the City’s Motion to Change Trial Date from
15 February 24, 2020 to April 27, 2020?

16 IV. EVIDENCE RELIED UPON

17 The City relies upon the Declaration of Mark S. Filipini and attached exhibits file
18 hereto.

19 V. ARGUMENT

20 Under Local Civil Rule (“LCR”) 4(d), the Court may on motion of a party “modify
21 any date in the Case Schedule for good cause, except that the trial date may be changed only
22 as provided in LCR 40(e).” Local Rule 4(d). LCR 40(e)(2) provides that a motion to
23 “change a trial date more than 28 days before or after the original date, shall be made in
24 writing to the assigned Judge” and “decided without oral argument.” LCR 40(e)(2). The
25

deadline in the Case Schedule to change the trial date is November 18, 2019 and the deadline to make such a motion is November 7, 2019. Thus, the City's motion is timely.

Good cause exists to change the trial date. The Parties declared their intent to change the trial date at the Pretrial Conference on July 1, 2019. Had it been filed, a new trial date of April 27, 2020 would have been proposed to the Court in the Joint Discovery Plan and Status Report. Despite good faith efforts to finalize the Joint Discovery Plan and Status Report over the last three months, counsel for the City has been unable to get Plaintiffs' approval to file same. While the City is hopeful that the filing of this Motion will revive discussion between counsel on the draft Joint Discovery Plan and Status Report, and perhaps obviate the need for the Court to rule on this Motion, the City is filing this Motion out of an abundance of caution before the deadline passes to change the trial date. Moreover, to the extent the Joint Discovery Plan and Status Report is not filed shortly with the Court by the parties, the City is also amenable to another status conference before the Court to resolve any remaining issues.

VI. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court change the trial date from February 24, 2020 to April 27, 2020. A proposed order is submitted with this motion.

I certify that this memorandum contains 864 words, in compliance with the Local Civil Rules.

DATED this 7th day of November, 2019.

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Signed this 7th day of November, 2019, at Seattle, King County, Washington.

Anita Spencer, Practice Assistant

The Honorable John R. Ruhl

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

255 SOUTH KING STREET LIMITED PARTNERSHIP, a Washington limited partnership; 618 SECOND AVENUE LIMITED PARTNERSHIP, a Washington limited partnership; 1000 1ST AVENUE LIMITED PARTNERSHIP, a Washington limited partnership; and 1016 1ST AVENUE LIMITED PARTNERSHIP, a Washington limited partnership,

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No. 19-2-05733-5 SEA

(Consolidated with No. 19-2-08787-1 SEA)

[PROPOSED] ORDER GRANTING DEFENDANT CITY OF SEATTLE'S MOTION FOR NEW TRIAL DATE

CLERK'S ACTION REQUIRED

No. 19-2-08787-1 SEA
(Judge Ken Schubert)

[PROPOSED] ORDER GRANTING DEFENDANT CITY OF SEATTLE'S MOTION FOR NEW TRIAL DATE - 1

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individual; and RONALD EVAN
WALLACE, an individual,

Plaintiffs,

vs.

CITY OF SEATTLE, a Washington
municipal corporation,

Defendant.

1 This matter came before this Court on Defendant the City of Seattle's (the "City's")
2 Motion for New Trial Date. The Court has considered the briefing and the files and
3 records in this action, and concludes that it is appropriate to change the trial date from
4 February 24, 2020 to April 27, 2020.

5 THEREFORE, IT IS ORDERED:

- 6 1. The City's Motion for New Trial Date is GRANTED.
7 2. The Order Setting Civil Case Schedule in case number 19-2-05733-5 SEA
8 shall be updated to reflect the new trial date of April 27, 2020.

9 SO ORDERED _____, 2019.

10
11 THE HONORABLE JOHN R. RUHL

12 Presented by:

13 K&L GATES
14

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